HON'BLE SRI JUSTICE R.SUBHASH REDDY

WRIT PETITION NO : 33773 of 1998

Dated 28th March, 2007

Between

Smt. T.Sridevi

…Petitioner

and

The Commissioner, Qutubullahpur Municipality,
Qutubullapur, RR District, and, anr

…Respondents.

THE HON'BLE MR JUSTICE R.SUBHASH REDDY

WRIT PETITION NO : 33773 of 1998

ORDER:

In this Writ Petition, the petitioner has questioned the notice dated 9-11-1998 issued by the Commissioner, Qutbullahpur Municipality in Ranga Reddy District.

In the affidavit filed in support of the Writ Petition, it is stated that the petitioner is the owner of Flat Nos. 1, 13 and 14 constructed in Plot No. 12/A in Survey No. 144 of Qutbullahpur Municipality. It is stated that Flat No.1 is a two bed room apartment constructed with 800 square feet, Flat No.13 is the Penthouse constructed with 495 square feet and Unit No. 14 is the covered garage. It is further stated that the petitioner has purchased said flats from the developer and is in possession of the said plots. It is the case of the petitioner that no show

cause notice was issued to the petitioner before issuing the impugned notice. It is the further case of the petitioner that the petitioner has already filed an application for regularization of the deviations from the sanctioned plan, if any, and pending such application, the respondents ought not to have issued the impugned notice.

At the stage of admission, this Court by order dated 3-12-1998 granted interim order directing the respondents not to demolish the structures pursuant to the impugned notice and said order continued all along.

Though the Writ Petition is of the year 1998, no counter affidavit is filed on behalf of the respondents controverting the allegations made in the affidavit filed by the petitioner.

Impugned notice is issued in exercise of powers under Section 228 (3) of the A.P. Municipalities Act, 1965 confirming the earlier notice dated 31-10-1998. Under Section 228 of the A.P. Municipalities Act, 1965, if construction of any flat is commenced without obtaining the permission of the Commissioner or if such work is being carried on, or, completed, not in accordance with the sanctioned plan, a provisional order is required to be passed requiring the owner or builder to demolish the work done or so much of it as in the opinion of the said officer has been unlawfully executed or to make such alternations as may be necessary to bring the work in conformity with the Act, Bye-laws, or Rules and such provisional order shall be served under Section 228(2) of the Act by giving opportunity, as to why such order shall not be confirmed. Thereafter only the order passed under Section 228(2) of the Act can be confirmed by passing further order under Section 228(3) of the Act. The case on hand is a case

where permission was granted for construction of building, but however, it is stated, in deviation of the sanctioned plan, constructions are made. However, a perusal of the impugned notice discloses that there are no particulars of the deviated portions, except mentioning as 'deviations to the sanctioned plan'. In view of the language envisaged in Section 228 (1) and (2) of the Act, before taking any action and passing an order under Section 228(3) of the Act, it is obligatory on the part of the respondents to mention the deviated portions so as to give opportunity to the owner for removal of such deviations to bring in conformity with the sanctioned plan. In absence of any such particulars of deviations being furnished, such notice is not in conformity with the provision under Section 228 (1)(2) and (3) of the Act.

Further in this case, though it is specifically alleged that no show cause notice is served as required under Section 229(2) of the Act before passing the order in conformity with Section 228(3) of the Act, but, however, no counter is filed controverting the same. In that view of the matter, as impugned notice is not in conformity with the provision under Section 228(3) of the Act, and, as no particulars of deviated portions are mentioned in the impugned order, the same is liable to be set aside.

It is stated by the learned Counsel for the petitioner that an application was filed to regularize the deviated portions as per G.O.Ms. No. 419, dated 30-07-19989. But however, subsequently a separate Act, titled as, *A.P. Regularization of the Unauthorized Constructions in Municipal Corporations, Municipalities and Urban Development Authorities Act, 2003,* was introduced for regularization of the unauthorized structures, and while it is open for the petitioner to pursue the said application, at the same time, the same is no ground to stall

the proceedings initiated under Section 228 (2) of the Act.

For the foregoing reasons, the notice under challenge dated 9-11-1998 issued by the first respondent is quashed. However, it is made clear that it is open for the respondents to take steps in accordance with the provisions of Section 228 of the Act by mentioning the particulars of the deviated portions in the fresh notice to be issued to the owner of the building. If the application of the petitioner for regularization is still pending consideration, it is equally open for the respondents to consider the same in accordance with the *A.P. Regularization of the Unauthorized Constructions in Municipal Corporations, Municipalities and Urban Development Authorities Act, 2003*.

The Writ Petition is allowed to the extent indicated above. No order as to costs.

JUSTICE R. SUBHASH REDDY

DATE: 28-03-2007.
Msnr.